

ANDRIANNE LUIZ AND JOHN LUIZ

JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7331]

The Committee on the Judiciary, to which was referred the bill (H. R. 7331) for the relief of Andrianne Luiz and John Luiz, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

(1) On page 1, line 6, strike out the figure "\$1,250", and insert in lieu thereof "\$3,000".

(2) On page 1, line 8, strike out the figure "\$250" and all thereafter, down to and including "John Luiz" on page 1, line 11, and insert in lieu thereof:

\$25, in full settlement of all the claims of John Luiz against the United States and in full settlement of all claims of Andrianne Luiz against the United States for personal injuries, medical and hospital expenses and loss of wages,

PURPOSE

The purpose of this private bill, as amended, is to pay the sum of \$3,000 to Andrianne Luiz and \$25 to John Luiz, of North Massapequa, N. Y., in full settlement of all claims against the United States by John Luiz and for all claims against the United States by Andrianne Luiz for personal injuries, medical and hospital expenses, and loss of wages sustained as a result of an accident involving a United States Post Office vehicle, in New York, N. Y., on October 26, 1943.

STATEMENT

The driver of the postal vehicle was traveling about 5 miles per hour, south on Nineteenth Avenue on October 26, 1943, when he attempted to make a right turn into Benson Avenue. The driver stated that he saw a man and woman with umbrellas over their heads, in the middle

of the roadway crossing from the south to the north side of the street. The man attempted to run back in a southerly direction and the woman ran in a northwesterly direction. The right front of the postal truck struck Andrienne Luiz, one of the claimants, knocking her down. The man who had accompanied the injured woman was her husband, John Luiz, the other claimant, and he helped her up, and she was taken to Harbor Hospital in a private car. John Luiz accompanied his wife to the hospital and it was there determined that he suffered from a sprained wrist. It further appeared that his wife Andrienne Luiz suffered a fissure fracture of the lower end of the fibula. Mr. John Luiz received no treatment, but his wife was hospitalized until December 7, 1943, a total of 13 days. The total bill for hospital and medical expenses amounted to \$270, and dressings have amounted to \$935.

The loss of wages during this period amounted to \$1,110.

The statement of the accident and recommendation submitted by the local office to the Washington, D. C., office discloses that the postal driver was at fault in that he failed to use due care when making his right-hand turn. The committee wishes to point out that the negligence attributed to the claimant in the report of the Post Office Department, namely, that the umbrella obstructed the claimants' view and hence they failed to keep a proper look-out, is not sufficient to bar this claim. It is difficult to understand how this statement was made by the Washington, D. C., office when no mention is made concerning such a factor in the report of the local office.

The claimant has no administrative or legal remedy available to him, since this claim occurred prior to the effective date (January 1, 1945) of the Federal Tort Claims Act, (60 Stat. 843; 28 U. S. C. 931) as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by Public Law 55, Eighty-first Congress, approved April 25, 1949.

Consequently, the committee recommends that this bill, as amended, be favorably considered. The report of the Post Office Department, dated May 6, 1952, and the report of Postmaster Frank J. Quayle, Jr., dated March 17, 1944, are set forth in their entirety below, together with a table of expenses by the claimant, dated, March 23, 1950.

UNITED STATES POST OFFICE,
OFFICE OF SUPERINTENDENT OF MOTOR VEHICLE SERVICE,
Brooklyn, N. Y., March 17, 1944.

Memorandum of accident.

FOURTH ASSISTANT POSTMASTER GENERAL,
Division of Motor Vehicle Service,
Washington 25, D. C.

DEAR SIR:

Date of accident: October 26, 1943.

Capacity: 3 tons. Make: Autocar. Service No. 6331-(P-6667).

Name of injured person: Adrienne Luiz, 8732 Nineteenth Avenue, Brooklyn, N. Y.

Nature and extent of injury: Injury to right lower leg.

Taken to Harbor Hospital, Brooklyn, N. Y., by private car from scene of accident.

Age: 37 years. Sex: Female.

Discharged from said institution on December 7, 1943.

Amount of claim filed for personal injury: \$20,000.

Name of additional injured person: John Luiz, 8732 Nineteenth Avenue, Brooklyn, N. Y.

Nature and extent of injury: Alleged wrist injury. Refused medical attention.

Amount of claim filed for personal injury: None.

STATEMENT OF ACCIDENT AND RECOMMENDATION

Statement of the Government driver: "I was traveling south on Nineteenth Avenue and making a right turn into Benson Avenue, at about 4 miles per hour, when I saw a man and a woman with umbrellas over their heads, in the middle of the roadway crossing from the south to the north side of the streets. The man ran back in a southerly direction and the woman ran in a northwesterly direction. The right front of my truck struck the woman, knocking her down. The man helped pick the woman up. The woman was taken to Harbor Hospital in a private car. Mr. J. Luiz, after returning back to Bath Beach Station from the hospital, told me he had injured his wrist. It was very dark at this intersection, raining hard, the two people had umbrellas over their heads, and as I was making the turn at about 4 miles per hour, it is my opinion that this accident was unavoidable."

The investigation of this accident disclosed that the Government driver was at fault for the reason that he failed to use the required care when making a right turn from Nineteenth Avenue into Benson Avenue resulting in the mail truck striking a woman pedestrian, one Adrienne Luiz, 8732 Nineteenth Avenue, Brooklyn, N. Y., who was crossing from the south to the north side of Benson Avenue at Nineteenth Avenue, causing her to fall to the pavement. The husband of the woman, one John Luiz, who accompanied her in crossing the street, stated that his wrist was injured. However, he refused medical attention and has filed no claim for the alleged injury.

The said Adrienne Luiz was removed to the Harbor Hospital from the scene of the accident where her injury was diagnosed as follows: "Pain and swelling in right lower leg. X-ray findings showed fissure fracture of lower end of fibula."

She was discharged from the Harbor Hospital on December 7, 1943, and has since filed claim for personal injury in the amount of \$20,000, which, in the opinion of this office, is grossly excessive inasmuch as the bills furnished in support of the claim show financial loss only in the amount of \$512.93. A summary of the enclosed bills submitted shows:

Hospitalization.....	\$267. 00
Alleged loss of wages.....	225. 99
Medicines, etc.....	16. 94
Transcript from Harbor Hospital.....	3. 00
Total.....	512. 93

The Government driver was duly penalized and warned and has since resigned from the motor-vehicle service. The mail truck was not damaged.

In view of the filed claim the papers in the case are herewith submitted for such action in the premises as you may deem advisable.

Very truly yours,

FRANK J. QUAYLE, Jr., *Postmaster.*

POST OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., May 6, 1952.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: This will acknowledge your letter of April 3, requesting a report on H. R. 7331 for the relief of Andrienne Luis and John Luis.

The records of the Department show that Mrs. Luis was injured by a mail truck which was making a right turn at an intersection of streets in Brooklyn, N. Y., on October 26, 1943. Although the pedestrian was not entirely without fault in that she was crossing the street with an open umbrella which partially obstructed her view and was not exercising that degree of care which might reasonably have been expected of her, the Department would not oppose a reasonable award to this claimant unless the Congress should feel as a matter of policy that she is not entitled to such relief because of her extreme laches in prosecuting her claim. However, should relief be granted, it seems proper to point out that the injured women's expenses, including hospitalization, medicines, and loss of wages, amounted to only \$512.93. Therefore the amount of compensation sought in

the bill is grossly excessive. Any award made, including an allowance for pain and suffering, should not be in excess of \$1,500.

This Department has been advised by the Bureau of the Budget that it would have no objection to the presentation of this report to the committee.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

MARCH 23, 1950.

Statement of expenses incurred by Mrs. Audrienne Luiz

Hospital bills

From Oct. 26, to Nov. 1, 1943, 7 days, at \$5 per day	---	\$35. 00	
Operating room service	-----	10. 00	
X-ray (hip, leg, ankle)	-----	32. 00	
Laboratory service	-----	5. 00	
			\$82. 00
From Nov. 2 to 8, 1943, 7 days, at \$5 per day	-----	35. 00	
X-ray service (ankle)	-----	10. 00	
			45. 00
From Nov. 9 to 15, 1943, 7 days, at \$5 per day	-----	35. 00	
From Nov. 16 to 22, 1943, 7 days, at \$5 per day	-----	35. 00	
From Nov. 23 to 29, 1943, 7 days, at \$5 per day	-----	35. 00	
From Dec. 1 to 7, 1943, 7 days, at \$5 per day	-----	35. 00	
Dec. 7, 1943, transcript	-----	3. 00	
			270. 00
Total hospital bills	-----		270. 00
Bandages, medicine, gauze, etc	-----		41. 15
Dressings, 187 at \$5 per dressing	-----		935. 00
Loss of work, 9 months and 1 week, 37 weeks, at \$30 per week	-----		1, 110. 00
Total expenses	-----		2, 356. 15